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March 7, 1997

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98)

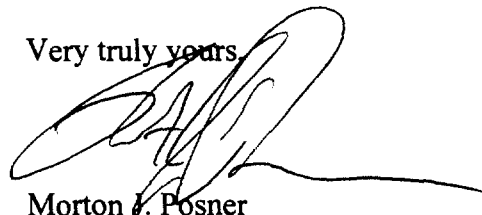
Dear Mr. Caton:

Transmitted herewith on behalf of WorldCom, Inc., are an original and four (4) copies of its Comments in the above-referenced proceeding concerning the Pennsylvania Public Utility Commission's Petition for Expedited Waiver. In addition, a copy of the Comments is being served on International Transcription Services, and two (2) copies are being served on the Chief, Network Services Division of the Common Carrier Bureau.

Also enclosed is an extra copy of this letter and Comments. Please date-stamp the extra copy and return to the undersigned in the envelope provided.

If there are any questions concerning this matter, please contact me.

Very truly yours,



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184307.1

Before the
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MAR 7 1997
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OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996))))	CC Docket No. 96-98

COMMENTS OF WORLDCOM, INC.

WorldCom, Inc., by counsel, hereby files its comments in opposition to the Pennsylvania Public Utility Commission's ("PUC") Petition for Expedited Waiver of the Ten Digit Dialing Requirement of 47 C.F.R. § 51.29(c)(3)(ii) for 412 NPA Overlay Area Code Relief.^{1/}

The PUC seeks an expedited Commission waiver of provisions of the *Second Report and Order* in this docket^{2/} so that it may lawfully implement area code relief in the 412 Numbering Plan Area ("NPA") by the Bell Atlantic NPA Relief Coordinator's May 1, 1997 deadline. The PUC has offered no special circumstances particular to Pittsburgh which merit an extraordinary Commission waiver. Moreover, Commission grant of the PUC's request would undermine the integrity of the *Second Report and Order* and would incent Bell Operating Companies ("BOCs") artificially to create numbering resource shortages for the purpose of effecting or making anticompetitive area code changes. The petition should be denied.

^{1/} See February 25, 1997 FCC Public Notice, DA 97-405.

^{2/} Second Report and Order and Memorandum Opinion and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 96-333, CC Docket No. 96-68 (released Aug. 8, 1996) ("*Second Report and Order*").

Background

On March 8, 1996, the Bell Atlantic NPA Relief Coordinator petitioned the PUC to select an area code relief method for the 412 NPA, which covers the Pittsburgh region. Following a notice and comment rulemaking proceeding, the Commission adopted an overlay plan on June 10, 1996. The Commission's written ruling was issued September 12, 1996, and it ordered that all new telephone subscribers in the Pittsburgh region are to be placed within the overlay NPA.^{3/} In addition, the Commission ordered that local exchange carriers ("LECs"):

shall continue the use of seven-digit dialing within each area code to the extent technically feasible and for as long as it remains feasible. Ten-digit dialing may become permissive with the institution of the overlay code, but should not become mandatory until necessary.^{4/}

Within the three month interval between the PUC's vote and the issuance of its written opinion, the Commission released its *Second Report and Order* in this docket.^{5/} In that decision, the Commission ruled that states which order overlay NPA relief plans must institute mandatory 10-digit dialing for all calls within and between the resulting two NPAs to alleviate customer confusion and to mitigate the inherently anticompetitive nature of overlays. The Commission also

^{3/} Order, *Petition of NPA Relief Coordinator Re: 412 Area Code Relief Plan*, Docket No. P-00961027 (Pa. PUC Sept. 12, 1996) ("*412 NPA Order*"). MFS Communications Company, Inc. ("MFS"), which has a Pennsylvania subsidiary certificated by the PUC to provide local telecommunications service in exchanges served by Bell Atlantic within the Pittsburgh LATA, participated in that proceeding. MFS has subsequently become a subsidiary of WorldCom.

^{4/} *Id.* at 15-16.

^{5/} The *Second Report and Order* is subject to a pending appeal in the U.S. Court of Appeals for the Eighth Circuit and to petitions for reconsideration before the Commission, including a petition filed by the PUC.

directed that state-implemented overlay plans guarantee that every authorized local exchange carrier existing in the affected NPA 90 days before plan implementation have access to at least one NXX code in the old area code.^{6/} The PUC's order did not comply with either of these federally imposed conditions.

MFS and other new entrants sought reconsideration of the PUC's decision on the basis that the ruling plainly conflicts with the *Second Report and Order*. Those reconsideration motions were denied. The County of Allegheny (where Pittsburgh is situated) and MCI appealed the PUC's decision to the Commonwealth Court of Pennsylvania, where oral argument is scheduled for April 9, 1997 before the *en banc* 15-judge court.^{7/}

In the instant Petition, the PUC claims that this Commission's order conflicts with the PUC's ruling and poses "additional requirements on the use of overlays." PUC Petition at 4, 6. To the contrary, the PUC's order is the inconsistent ruling. This Commission has plenary jurisdiction over numbering administration matters. 47 U.S.C. § 251(e). Having failed to comply with this Commission's order, and despite the fact that two appeals of the *412 NPA Order* currently pend in state appellate court, one appeal of the *Second Report and Order* pends in federal appellate court, and its own Motion for Reconsideration of the *Second Report and Order* pends before the Commission, the PUC apparently believes it is somehow entitled to bypass these legal processes by grant of a waiver. Not only are the PUC's arguments meritless, but grant of the requested waiver would endanger nationwide development of local competition.

^{6/} *Second Report and Order*, ¶¶ 286-87.

^{7/} *See County of Allegheny v. PUC*, No. 2745 C.D. 1996 & *MCI Telecommunications Corp. v. PUC*, 2879 C.D. 1996 (Pa. Comm'w Ct.). MFS is a party-intervenor in MCI's appeal.

The PUC's Petition for Expedited Waiver

The PUC argues that the underlying premise of this Commission's 10-digit dialing requirement is lessened by "the availability of interim number portability at this time throughout the 412 area code and permanent number portability by mid-1998 in the Pittsburgh MSA." PUC Petition at 6. This Commission considered the effect of evolving number portability measures on area code relief when it issued its *Second Report and Order*.^{8/} If the PUC believes that that decision is incorrect, the PUC should wait for a ruling on its Petition for Reconsideration of the *Second Report and Order* rather than seek extraordinary relief. The PUC does not assert that NPA relief is necessary any sooner than when it ordered the inconsistent overlay plan. Rather, the PUC's sole factual basis supporting waiver appears to be the Commission has not decided the PUC's Petition for Reconsideration fast enough. This reason does not represent the "good cause" necessary for the Commission to exercise its waiver authority pursuant to 47 C.F.R. § 1.3.^{2/}

^{8/} See *Second Report and Order*, ¶ 290; see also *First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability*, FCC 96-286, CC Docket No. 95-116 (released July 2, 1996).

One may honestly question whether the PUC understands the relationship between number portability and area code relief. In the *412 NPA Order*, the PUC rejected evidence of consumer distaste for overlays (which ultimately require 10-digit dialing for all local calls) on the assumption that "long-term number portability will probably require ten-digit dialing." *412 NPA Order*, at 8. This PUC ruling is infirm because only location number portability, a service which does not currently exist, actually requires 10-digit dialing. Service provider portability, the type of number portability associated with area code relief, does not. Similarly, the PUC's order stated that consumers keep their existing telephone numbers in an overlay plan but not in a split plan. *Id.* at 9-10. This statement is true only if a consumer wishes to retain his current LEC. Consumers who convert to a new entrant under an overlay plan necessarily must change their telephone number.

^{2/} Neither does it constitute the "public interest" showing necessary for regulatory forbearance under 47 U.S.C. § 160.

In fact, a waiver would be harmful to the development of local competition. As the Commission found in the *Second Report and Order*, overlay plans, especially ones that do not require 10-digit dialing, advantage incumbent carriers to the detriment of new entrants to the local exchange market. This federal policy guidance defines what constitutes permissible area code relief in conformance with the Telecommunications Act's mandate of local competition. Grant of an individual waiver, especially in the absence of any relevant circumstances, would set a precedent for state commissions and Bell companies to request additional waivers. Grant of a waiver in this particular case would incent Bell companies to seek direct rulings from the Commission in the event of numbering resource shortages or state commission inaction. The effect will be to force the Commission to allow anticompetitive overlay plans in the states when time is short.

For example, on July 1, 1996, the Bell Atlantic NPA Relief Coordinator petitioned the PUC to implement area code relief for NPA 717 (Harrisburg) by July 1, 1998.^{10/} Less than six months later, the NPA Relief Coordinator notified the PUC that he had seriously misjudged demand for NXX codes and that he had immediately started rationing NXX code assignments to four per month, and only one per carrier, for all requesting carriers. Such rationing severely restricts the ability of a new entrant to provide telephone numbers to customers in additional wire centers. Despite this rationing, and a consensus request from the industry that the PUC immediately commence its rulemaking proceeding, the PUC has taken no action. It stands to reason that if the Commission grants a waiver of the 10-digit dialing requirement for Pittsburgh, either Bell Atlantic or the PUC

^{10/} See *Petition of NPA Relief Coordinator to Resolve 717 Area Code Relief Issues*, Pa. P.U.C. Docket No. P-00961071.

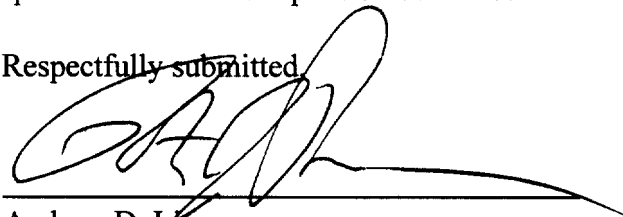
will eventually request a similar waiver for Harrisburg, perhaps on the basis that time does not permit any other option.

While MFS has no direct evidence that Bell Atlantic or any other Bell company is purposely misjudging demand for NXX codes, a Commission waiver of the 10-digit dialing requirement increases the potential for mischief. Knowing that waiver is possible would incent Bell companies to create artificial numbering shortages so that they may obtain extraordinary Commission approval of an otherwise anticompetitive overlay plan. In the end, the *Second Report and Order* will be undermined and the evolution of local competition will be harmed.

Conclusion

The PUC has placed itself in a position where it cannot lawfully implement area code relief by the time NXX codes exhaust without either an extraordinary Commission waiver or PUC reconsideration of its *412 NPA Order*. The PUC offers no reason why it has not or will not comply with the Commission's *Second Report and Order*. The PUC's effort to bypass administrative and judicial process should not be permitted. Moreover, if the waiver is granted, the Commission will set a precedent which encourages Bell companies to game area code relief to the detriment of new entrants. For the above reasons, MFS respectfully requests that the PUC's petition be denied.

Respectfully submitted,



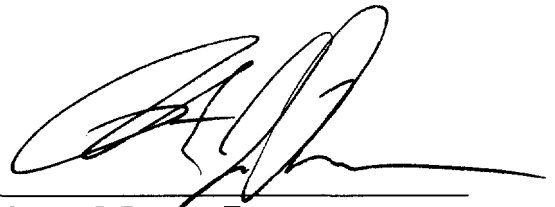
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 1997, copies of the foregoing Comments of WorldCom, Inc. in CC Docket No. 96-98 were served by first class mail, postage prepaid, on the following attached list.



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